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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

Paul Banks. ,

Plaintiff,

vs.

STATE OF OREGON, JOHN DOES ONE
and TWO in their individual and official
capacities as peace officers of the Oregon
State Police

Defendants.

Case No

COMPLAINT

Violations of the Fourth Amendment of
the U.S. Constitution

Supplemental State Claims

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1. This is an action for declaratory, injunctive, and monetary relief including, punitive damages and attorneys' fees and costs, to redress defendants' violations of plaintiff's federally protected rights and state common law claims.

JURISDICTION

2. This court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights). This court has supplemental jurisdiction over the state common law claims under 28 U.S.C. § 1367 as they derive from a common nucleus of operative facts as the federal claims.

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PAGE 1 - THIRD AMENDED COMPLAINT

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PARTIES

3. Plaintiff Paul Banks ("Mr. Banks") is an African American, male resident of the state of Oregon. At all material times herein, Mr. Banks was fifty-one years old.

4. Defendant state of Oregon is one of fifty sovereign bodies which comprise the republic of the United States of America. Mr. Banks is authorized to bring his claims and recover against the state of Oregon pursuant to Oregon's Tort Claim Act, O.R.S. §§ 30.260 et. seq. Pursuant to Oregon's Tort Claim Act, the state of Oregon is liable for the torts of its employees committed within the course and scope of their employment.

5. Defendants John Doe One and Two (defendant's "One" and "Two") worked as a duly appointed peace officers for the Oregon State Police on or about November 4, 2010. At the time of the filing of this complaint, Mr. Banks did not know the identity of these defendants. They are sued in their official and individual capacities. The events alleged in this action occurred during course and scope of defendant One and Two's employment as peace officers for the Oregon state police. At all relevant and material times defendants One and Two were acting under the color of law.

COMMON ALLEGATIONS

6. On or about November 4, 2010, Mr. Banks was driving south on Interstate 5 near the city of Tualatin when he was pulled over by defendants One and Two.

7. Mr. Banks cooperated with the officers during the stop and did what he was told. In spite of this one of the officers proceeded to trip Mr. Banks so that he fell on the concrete and spite his lip and sustained serious teeth and mouth injuries.

8. At that point, Mr. Banks attempted to defend himself and the other officer further assisted the original officer in manhandling Mr. Banks by yanking and pulling

both his arms to such an extent that he was unable to use either of them effectively for two weeks.

9. Throughout this ordeal, Mr. Banks did not give any of the officers any reason to use the force that they did or to act as they did.

FIRST CLAIM FOR RELIEF

Unreasonable Seizure – Fourth Amendment of the U.S. Constitution

(42 U.S.C. § 1983 Against Defendants One and Two)

10. Plaintiff realleges and incorporates paragraphs 1 through 9 above.

11. Defendants One and Two violated plaintiff's right to be free from unreasonable seizure under the Fourth Amendment, by manhandling Mr. Banks in such a manner that he sustained serious lacerations to his face as well as several cracked and chipped teeth. Mr. Banks' conduct was reasonable after and before he was assaulted.

12. As a result of the conduct of defendants as previously described, plaintiff has suffered serious medical injuries for which he sought medical treatment as well as humiliation, anxiety, depression, pain, and severe emotional distress and is entitled to an award of \$300,000 in compensatory damages.

13. The conduct of defendants One and Two was reckless and/or showed a callous indifference to plaintiff's constitutional rights. Consequently, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

14. Pursuant to 42 U.S.C. § 1988, plaintiff is entitled to reasonable attorney's fees and costs, including expert witness fees.

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SECOND CLAIM FOR RELIEF

Excessive Force – Fourth Amendment of the U.S. Constitution

(42 U.S.C. § 1983 Against Defendants One and Two)

15. Plaintiff realleges and incorporates paragraphs 1 through 14 above.

16. Defendants One and Two violated plaintiff's right to be free from unreasonable seizure under the Fourth Amendment, by manhandling Mr. Banks in such a manner that he sustained serious lacerations to his face as well as several cracked and chipped teeth. Mr. Banks' conduct was reasonable after and before he was assaulted

17. As a result of the conduct of defendants as previously described, plaintiff has suffered serious medical injuries for which he sought medical treatment as well as humiliation, anxiety, depression, pain, and severe emotional distress and is entitled to an award of \$300,000 in compensatory damages.

18. The conduct of defendants One and Two was reckless and/or showed a callous indifference to plaintiff's constitutional rights. Consequently, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

19. Pursuant to 42 U.S.C. § 1988, plaintiff is entitled to reasonable attorney's fees and costs, including expert witness fees.

THIRD CLAIM FOR RELIEF

Battery at Common Law

(Against all Defendants)

20. Plaintiff realleges and incorporates Paragraphs 1 through 19 above.

21. Defendants One and Two intentionally subjected plaintiff to offensive,

harmful and unwanted touching.

22. As a proximate result of defendants' conduct, plaintiff has suffered from bruising, soreness, pain, anxiety, and emotional distress, resulting in non-economic damages in the amount of \$75,000.

FOURTH CLAIM FOR RELIEF

Unreasonable Seizure – Fourth Amendment of the U.S. Constitution

(O.R.S. §§ 30.260 et. seq. - Against defendant State of Oregon)

23. Plaintiff realleges and incorporates Paragraphs 1 through 22 above.

24. Defendant state of Oregon, by and through defendants One and Two, violated plaintiff's right to be free from unreasonable seizure under the Fourth Amendment, by manhandling Mr. Banks in such a manner that he sustained serious lacerations to his face as well as several cracked and chipped teeth. Mr. Banks' conduct was reasonable after and before he was assaulted

25. As a result of the conduct of defendants as previously described, plaintiff has suffered serious medical injuries for which he sought medical treatment as well as humiliation, anxiety, depression, pain, and severe emotional distress and is entitled to an award of \$300,000 in compensatory damages.

26. Pursuant to O.R.S. § 20.275, plaintiff is entitled to reasonable attorney's fees and costs, including expert witness fees.

FIFTH CLAIM FOR RELIEF

Excessive Force – Fourth Amendment of the U.S. Constitution

(O.R.S. §§ 30.260 et. seq. - Against defendant State of Oregon)

27. Plaintiff realleges and incorporates Paragraphs 1 through 26 above.

28. Defendant state of Oregon, by and through defendants One and Two, violated plaintiff's right to be free from unreasonable seizure under the Fourth Amendment, by manhandling Mr. Banks in such a manner that he sustained serious lacerations to his face as well as several cracked and chipped teeth. Mr. Banks' conduct was reasonable after and before he was assaulted

29. As a result of the conduct of defendants as previously described, plaintiff has suffered serious medical injuries for which he sought medical treatment as well as humiliation, anxiety, depression, pain, and severe emotional distress and is entitled to an award of \$300,000 in compensatory damages.

30. Pursuant to O.R.S. § 20.275, plaintiff is entitled to reasonable attorney's fees and costs, including expert witness fees.

DEMAND FOR A JURY TRIAL

31. Plaintiff demands a jury trial.

PRAYER

Plaintiff prays for judgment against all defendants as follows:

1. A declaration that defendants violated plaintiff's state and federal rights;
2. For injunctive relief as the court sees fit in order to remedy defendant's past unlawful conduct and to prevent future unlawful conduct by defendants;
3. Economic damages in an amount to be determined at trial for plaintiff's medical expenses incurred as a result of this matter;
4. Compensatory damages in the amount of \$300,000 for plaintiff's severe emotional distress due to the unlawful conduct of defendants;
5. Punitive damages in an amount to be determined at trial; and,
6. Plaintiff's attorney's fees and costs, including expert witness fees, and disbursements incurred herein.

Dated: NOVEMBER 5, 2012

BY: INVISION LAW FIRM

s/ Gerald Noble

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